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# State v. Hallquist Respondent's Brief Dckt. 43268

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 43268
Plaintiff-Respondent,	)	
	)	Ada County Case No.
v.	)	CR-2014-1502
	)	
KENNETH HALLQUIST,	)	
	)	RESPONDENT'S BRIEF
Defendant-Appellant.	)	
_____	)	

Issue

Has Hallquist failed to establish the district court abused its discretion by limiting the information it considered when ruling on his Rule 35 motion for a reduction of his unified sentence of five years, with one year fixed, imposed upon his guilty plea to felony intimidating a witness?

Hallquist Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Hallquist pled guilty to felony intimidating a witness and the district court imposed a unified sentence of five years, with one year fixed, and retained jurisdiction. (R., pp.83-88.) Following the period of retained jurisdiction, the district court suspended

Hallquist's sentence and placed him on supervised probation for four years. (R., pp.110-14.) Hallquist filed a Rule 35 motion for a reduction of sentence, which the district court denied. (R., pp.124-27.) Hallquist filed a notice of appeal timely only from the district court's order denying his Rule 35 motion. (R., pp.130-32.)

Hallquist asserts that the district court "unduly limited the information it considered" when denying his Rule 35 motion for a reduction of sentence by failing to grant his request for additional time to supplement the motion. (Appellant's brief, pp.2-3.) Because Hallquist failed to make any showing or argument as to what documentation would have been provided if the court had permitted additional time, he has failed to establish that he was in any way prejudiced by the denial of his request for additional time.

Idaho Criminal Rule 35 provides the trial court may, in its discretion, decide a motion to modify a sentence without the admission of additional testimony and without oral argument. This discretion is abused only if the court unreasonably refuses to consider relevant evidence or otherwise unduly limits the information considered. State v. Bayles, 131 Idaho 624, 626, 962 P.2d 395, 397 (Ct. App. 1998); State v. Torres, 107 Idaho 895, 898, 693 P.2d 1097, 1100 (Ct. App. 1984). In Bayles, the Court of Appeals explained:

As we stated in *State v. Fortin*, 124 Idaho 323, 328, 859 P.2d 359, 364 (Ct. App. 1993), "A Rule 35 movant wishing to submit additional evidence should make an 'offer of proof' *in the motion itself or by an accompanying affidavit* to enable the district judge to make a reasoned decision on whether to hold an evidentiary hearing and to create a record upon which appellate review may be based." (Emphasis added.) Thus, when a Rule 35 motion is filed, it is incumbent upon the movant to present supporting evidence by way of affidavits or other documents. If anticipated evidence is not yet available ... such circumstances should be explained to the court in the motion or an accompanying affidavit.

Bayles, 131 Idaho at 626, 962 P.2d at 397.

Hallquist filed his Rule 35 motion for a reduction of sentence more than two months after the entry of the order placing him on probation, without including any new or additional information, or even any argument as to why the district court should grant his request for leniency. (R., pp.110, 124.) Instead, he simply included what appears to be standard phrasing asking that the court “grant leave in order to supplement this motion further with supporting documentation and/or other evidence.” (R., p.124.) Hallquist did not give any indication of the nature of the proposed supplementation, nor did he give any reasons why such documentation could not have been submitted with his motion. (R., p.124.) On appeal, Hallquist acknowledges that he did not satisfy his burden as required by Bayles. (Appellant’s brief, p.3.) In this case, as in Bayles, the district court did not refuse to consider evidence offered by Hallquist nor did it unfairly limit or preclude Hallquist’s presentation of evidence. Bayles, 131 Idaho at 626, 962 P.2d at 397. Hallquist was free to submit information he deemed relevant to his claim for leniency with his motion. The fact Hallquist elected not to do so, or to explain why such information was not yet available, does not establish that the district court abused its discretion.

Furthermore, the Court in Bayles expressly disapproved of a vague request for additional time very similar to that made by Hallquist in his Rule 35 motion. Bayles’ request for “the right to present evidence” was found by the appellate court to be “at once both unnecessary and inadequate.” Bayles, 131 Idaho at 627, 962 P.2d at 398. The request was “unnecessary” because the information Bayles sought to introduce could have been presented with the motion without prior leave of the court; it was

“inadequate” because it did not present any basis or justification for the request. Id. Like the flawed request in Bayles, Hallquist’s request for additional time to present evidence was vague, unnecessary and inadequate. Hallquist’s request for “leave in order to supplement this motion further with supporting documentation and/or other evidence” failed to adequately apprise the district court of the type of information Hallquist sought to introduce and the reason he needed additional time to gather that information.

Because he failed to identify with some particularity the information he sought to provide in support of his Rule 35 motion and the reason such information could not be filed with the Rule 35 motion, Hallquist cannot demonstrate the district court abused its discretion when it denied his request for additional time to supplement his Rule 35 motion. As such, Hallquist has failed to make any showing that the district court’s decision in any way “unduly” limited the information it considered in denying his Rule 35 motion. Hallquist has failed to establish an abuse of discretion, and the district court’s order denying Hallquist’s Rule 35 motion should be affirmed.

Conclusion

The state respectfully requests this Court to affirm the district court's order denying Hallquist's Rule 35 motion for a reduction of sentence.

DATED this 16<sup>th</sup> day of December, 2015.

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/s/  
LORI A. FLEMING  
Deputy Attorney General

VICTORIA RUTLEDGE  
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16<sup>th</sup> day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD  
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: [briefs@sapd.state.id.us](mailto:briefs@sapd.state.id.us).

\_\_\_\_\_  
/s/  
LORI A. FLEMING  
Deputy Attorney General